



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR
08/689,518	08/09/96	HOUSE

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ART. 1314

DATE MAILED: 03/04/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

The PTO did not receive the following
listed item(s) as it is

Office Action Summary

Examiner

☐ Responsive to communication(s) filed on _____☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matter in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. _____

A shortened statutory period for response to this action is set to expire 3 month(s), or, if longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims☒ Claim(s) 26-41 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.☒ Claim(s) 26-41 is/are rejected.☐ Claim(s) _____ is/are objected to.☐ Claims _____ are subject to restriction or election requirement.**Application Papers**☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☒ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____☐ Interview Summary, PTO-413☒ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

The PTO did not receive the following
 listed item(s) AS 810

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.3 Claims 26 to 41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 20 of U.S. Patent No. 5,511,897. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the present application are broad enough to encompass the method and kit claimed in the '897 patent.

21(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 26 to 41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed specification did not convey a method of sealing a manhole riser or a catch basin using only a single elastomeric band. The specification only

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contemplated the use of a plurality of the bands and provides no description of a method or kit which uses a single band.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26 to 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ditcher '310.

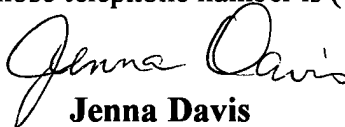
Ditcher '310 teaches a method of sealing a manhole riser comprising providing a band of elastomeric mater having a height at least equal to the height of the manhole riser. The band is placed over the manhole riser with its bottom edge proximate the base of the manhole riser and with the top edge secured to the top ring of the manhole riser. Unlike the band claimed here, the Ditcher band does not include an adhesive layer to secure the band to the manhole structure, however at column 5, lines 51 to 60, Ditcher shows that it was known in the art of sealing manholes to provide adhesive coatings to sealing structures in order to fasten such materials. Thus provision of an adhesive layer on the sealing band of Ditcher to fasten the material to the manhole would have been obvious as the use of a known fastening means for its intended and desired function. Catch basins and manholes appear to be treated in the same way in the art of sewer systems. Thus, providing a seal to a catch basin in the manner of Ditcher would also have been obvious.

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Any inquiry regarding this communication or earlier communications from the Examiner should be directed to Jenna Davis, whose telephone number is (703) 308-2429. The Examiner can normally be reached Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marion McCamish, can be reached on (703) 308-3961. A facsimile center has been established in Group 1300, Crystal Mall 1, Room 8D10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 305-5436. This location should be used in all instances when faxing any correspondence to Art Unit 1314. Use of the Group 1300 center will facilitate rapid delivery of materials to Examiners in Art Unit 1314.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.


Jenna Davis
Primary Examiner
Group 1300

jd
3/3/97